

The Examining Authority's questions from Issue Specific Hearing 4

Issued February 2020

Derby City Council – Answers to Questions

Item	ExA Agenda	Highways England (Draft) response
	<p>Whether DCiC have any outstanding concerns with respect to:</p> <ul style="list-style-type: none">• how Section 4 of the Highways Act would be affected;• provisions for construction and maintenance of new, altered or diverted streets and other structures (Article 13);• clearways (Article 18) or• traffic regulations (Article 19)?	<p>DCiC has been asked to provide a fuller response to this question. Article 13 clearly displaces the main Section 4 of the Highways act, which in essence means that for any new roads that are declassified as part of this scheme, there will be no financial agreement on future maintenance. Highways England's argument is that actually the level of additional asset that DCiC will be responsible for is minimal. Further, that as a local Highway Authority that we annually adopt new residential roads. However, the latter is supported by income generated by Council Tax from the occupation of new dwellings.</p> <p>It may be the case that the net gain in asset maintenance for DCiC is minimal. However, at this stage of scheme there is no detail of the inventory that we will be required to maintain. As such, with an inability to negotiate any financial contribution, which the flexibility of Section 4 gives, DCiC are in a vulnerable position or at least one that we cannot fully quantify. As such, this remains a concern for DCiC that until the detail is identified we potentially will not have full sight of the maintenance implications.</p> <p>In a meeting with the Applicant on 27/02/2020, it was suggested that the mechanism could be introduced into the Handover for Operation Process Note or MRSS for an Inventory. Further, that a broad outline of the inventory could also be identified at this stage. This provides some assurance but does not provide a mechanism for DCiC to negotiate the maintenance of any unforeseen onerous liabilities. For</p>

		<p>example, there is the potential for DCiC to be left with a significant increase in drainage interceptors. If these are not maintained properly then there is a risk of pollution and exposure to prosecution.</p> <p>In respect to Article 18 and Article 19 DCiC does not think that they have any implications on Section 4 of the Highways Act.</p>
3 a)	<p>Transport networks and traffic The openness and robustness of the qualitative assessment of congestion, route uncertainty, journey reliability, journey times and fear of accidents during construction. Explanations of where the assessment is uncertain. The potential for “sustained periods of severe congestion as a result of construction” suggested by DCiC.</p>	<p>This answer covers item 3a), 3b) and 3c) as set out in the Hearing Agenda 4 because they are interrelated.</p> <p>DCiC’s position on this question has always been that it will be difficult to predict the queuing and operational construction impacts on the local network. Strategic modelling provides a useful tool in identifying the broad re-routing of traffic patterns as a result of the construction phasing. However, it doesn’t provide the complete answer.</p> <p>This isn’t a criticism of the modelling assessment methodology or outputs used in the Environmental Statement. Indeed, the development of strategic modelling to test the economic and environmental cost benefits of major infrastructure schemes is well established through DfT guidance such as WebTAG and DMRB. It is a professional recognition of the forecasting limitations of strategic modelling in predicting the dynamic network demands as a result of implementing traffic management scenarios, particularly during the commuter peaks when network capacity is constrained. There is an expectation that the construction phasing of this large scheme, in an urban location, will be complicated and cause some local congestion problems that can’t be predicted. As such, there has to be processes in place to manage and change traffic</p>
3 b)	<p>The consideration given to the range of likely impacts on the population arising from</p>	

	<p>changes to congestion, route uncertainty, journey reliability and journey times on the local road network during construction. Consideration given to the inner ring road and major routes identified by DCiC.</p>	<p>management schemes if they don't operate as predicted.</p> <p>As such, it is how the applicant approaches the wider traffic management of such impacts during construction, and their commitment to maintaining the efficient movement of traffic (within reason) that is important.</p>
3 c)	<p>The modelling of queuing and junctions, the adequacy of the Saturn model and the need for LINSIG modelling for the assessment of impacts arising from disruptions to the local road network during construction.</p>	<p>The DCO places an obligation on the applicant to define their traffic management strategy through the Traffic Management Plan (TMP), and a process of governance. This is clear and DCiC does not have any issue with this or the wording in the DCO. However, it has been the content of the TMP and uncertainty over the exact construction phasing, until the detailed design is complete, which raised questions for DCiC.</p> <p>There have been further discussions with the applicant, and their contractor LinkConnex, and the TMP has been redrafted to provide more definition on communication, design and management processes. The inclusion of junction modelling to inform the design of temporary junctions as part of the traffic management phasing is an important step. Further, a commitment through the TMP to engage with transport operators and user groups, major businesses and public service providers through the Behaviour Change Group is also positive. LinkConnex and Highways England has actively engaged with this group and begun to discuss a communication strategy and liaison over traffic management.</p>
3 d)	<p>The updated Traffic Management Plan. The balance of prioritisation given to the A38 and to the local road network. Comments from the Local Highways Authorities, the</p>	<p>In part the answer to 3a), 3b) and 3c) above applies to the first part of the question to 3 d).</p>

	<p>A38 Behavioural Change Group and other stakeholders. Construction uncertainties, stakeholder engagement and resources. The Community Relations Manager and their liaison with DCiC and DCC. The ongoing role of the A38 Behavioural Change Group and how that should be secured.</p>	<p>DCiC are committed to strongly push for a locally based Community Relation based manager and that this post should be in part based Derby City Council Offices. DCiC will be one of the first points of call for concerns from residents and Councillors raising issues on a daily basis. Indeed the travelling public do not always understand the spatial network management responsibilities of different Highway Authorities. This will cause a resource drain for DCiC. Highways England and LinkConnex is open to this suggestion and has agreed to discuss this with the DCiC through a Technical Working Group, which is currently being formalised and terms of reference set out.</p>
<p>3 e)</p>	<p>Impacts resulting from the proposed development on the local road network (including junctions, the inner ring road and major routes identified by DCiC) during operation. Responsibility for their mitigation. Proposed mitigation measures and how they are secured. The need to monitor local roads and for a separate agreement.</p>	<p>The response from the Applicant at Hearing 4 to this question, is that Chapter 12 of the Environmental Statement looks at the wider impacts on all road users. Chapter 12, and specifically Section 12.10 looks at a range of effects from the scheme during construction and operation, including</p> <ul style="list-style-type: none"> • impacts on journey times for cyclists and pedestrians; • physical changes to the network for all highway users such as moving bus stops; • a specific assessment of driver stress related to changes in Peak Traffic link flows; • severance related to changes in link traffic flows ; • Community and Private Assets; • Human Health (Air Quality and Noise); and • Climate Change. <p>Further, the Chapter 7.3(a) Transport Assessment provides an analysis of the operation of the scheme that includes:</p> <ul style="list-style-type: none"> • Journey times with and without the improvement;

		<ul style="list-style-type: none">• 24 Hour AADT link flows;• Road Safety;• Walking and cycling• Public Transport <p>The assessments provide a broad measure of the impacts of the A38 Scheme on a range of assets and road users. There is no doubt that overall the A38 scheme will provide journey time, road safety and air quality benefits to both the trunk road and local road networks. However, DCiC has highlighted in previous answers to hearing questions that there might be particular junctions where there are significant changes to movements in traffic that will alter how they operate and potentially reduce their capacity. Broad metrics such as Driver Stress or changes in journey time do not provide an assessment of the changes in operation of junctions and impacts of queuing. The concern for DCiC is that as a minimum some junction signal timing might need adjusting to cope with changes to turning movements, however, changes to geometry might be required.</p> <p>To put this into context it is the same process of assessment that the A6/Ford Lane Junction has been through. It was identified that there was a significant change in turning movement at this junction and therefore it was tested using a more detailed junction model.</p> <p>DCiC provided the following examples in answer questions raised at Hearing 2.</p> <ul style="list-style-type: none">• Manor Road/Uttoxeter Road. Manor Road shows an increase of around 300 pcus in AM1.• Kingsway Junction/Cherry Tree Close/ Kingsway Retail Park.
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		<p>+265 increase towards Retail Park from A38 in AM2 Peak.</p> <ul style="list-style-type: none"> • Uttoxeter New Road/Brick Street/ Ashbourne Road. A61 Sir Frank Whittle Way/ Alfreton Road. +224 increase from junction towards A38 in AM2 Peak, +163 increase towards A38, mixture of increase/decrease on other arms. • A608/A61/ Hampshire Road. No significant change, this could be to do with the routing through the Meteor from Mansfield Road – increase through meteor is 253 in AM2 peak. Decrease on north and south bound towards Pentagon. • Kedleston Road Slips. AM2 +150 right turn and 242 left increase to southbound on-slip A38. • A38(T)/ A6 Duffield Road – Palm Court Island. +397 increase in northbound off slip in AM2 peak – increase of 332 on A6 Duffield Road approach from the north. <p>At a meeting held on 27/02/2020, Highways England reaffirmed it's position that the A38 Scheme will provide wider benefits across Derby's highway network. Further, the funding for the A38 Derby Junctions Scheme does not include funding for wider mitigation. However, Highways England suggested that a mechanism of monitoring the operation of the wider network is include in the OEMP. If significant operational impacts were identified as part of this process then the results could be used to petition for funding, either through Highways England or other funding routes. DCiC wants to see a commitment to such a mechanism.</p>
3 g)	Agreement of mitigation measures for Ford Lane Bridge (DCC and Network Rail concerns) and the Ford Lane/A6 Junction	DCiC has been in on-going discussions with LinkConnex on a scheme for Ford Lane/A6 Junction. LinkConnex has drawn up a couple of

	(DCiC concerns) and how they are secured.	alternative options to the full signalisation of the Junction and will be testing these shortly using junction modelling software.
17.	Article 50 - Appeals relating to the Control of Pollution Act 1974 SWQ [PD-014] 1.16 Applicant response [REP4-024]	<p>No further discussions have taken place. The basis of DCiC's objection to the wording of Article 50 related to the short time period (10 business days) within Article 50 that is provided to the Council in respect of drafting a response to any appeal lodged by the Applicant, for which the Applicant was originally stated in the dDCO to have a period of 42 days. DCiC notes that the Applicant has now offered to reduce the appeals period within the dDCO from 42 down to 21 days, however the requirement for the Council to submit written representations in respect of an appeal remains at 10 business days. This is not equitable.</p> <p>Whilst the purpose of DCiC's objection to the wording of Article 50 related more to extending the period available to the Council rather than reducing the appeals period available to the Applicant, DCiC does appreciate that there are practical limitations which forces a condensing of the process in order to resolve an appeal quickly. We further note that the 10 business day window is consistent with all other representation periods in respect of the appeal, including for the Applicant themselves to prepare a response to representations.</p> <p>Consequently, whilst DCiC would prefer a longer time period to make representations in respect of an appeal, this is not considered to be a significant objection to the wording of Article 50.</p>
CAH2 Item 9	a) The potential oversupply of Public Open Space. Whether there is enough certainty that CA of replacement land is necessary to	Following CAH2, DCiC has held further discussions with Highways England on outstanding matters of concern, including the issue of a potential surplus of POS land raised by the ExA. From these

	<p>justify the CA powers being granted. Whether CA of Replacement Land to avoid Special Parliamentary Procedure would be justified.</p>	<p>discussions DCiC can advise that:</p> <ul style="list-style-type: none"> - There is a surplus of open space land in the locality of the application site against the adopted standard of 3.8 hectares per 1000 population; - Equally, there is a an undersupply of POS land within the City Centre area, which lies close to the A38 corridor and is reliant on the presence of Markeaton Park for its recreational needs; - DCiC therefore considers that open space land supply, should be considered on a city wide basis, not in isolation; - DCiC is of the view that POS should be considered from both a quantitative and qualitative basis and the quantum of land is only part of the consideration; - The fact that there is a surplus of open land, should not in any event equate to an 'over supply' issue, as the standard is used for guidance purposes to ensure a minimum level of accessible high quality POS is provided within Derby; - As such there is no maximum level whereby the loss of POS should be disregarded because of an apparent surplus, as the provision above standard provides flexibility and enhancement for the benefit of the population of Derby; - In the case of the A38 Derby Junctions Scheme, DCiC accept that POS loss includes CA of land at Markeaton Park and as a high value recreational asset, it is entirely appropriate that replacement land should be provided, to mitigate for this loss.
<p>ISH4 Item 4</p>	<p>c) Potential effects on open space and events in Mackworth Park and Markeaton Park due to temporary possession, their</p>	<p>It isn't Temporary possession but the access construction and potential severance under the heading Effect on the business of the park. DCiC has +100 events and car parking generating some £600,000 with +1.6m visitors per year. Will need careful construction plans to ensure</p>

	mitigation and how that would be secured.	minimal/nil disturbances to maintain the popularity and patronage of the park
Item 7	b) Whether the proposal would retain an adequate level of tree cover at the Markeaton junction. Whether adequate measures are in place to ensure retention of felled timber on the site as biodiversity mitigation.	DCiC is expecting a net gain in tree provision in the detailed plans
	d) The effect of the proposed development on protected trees including T358, the correct identification of such trees and the appropriate Root Protection Areas. Updates required to the OEMP.	DCiC has raised points to consider in the pursuit of the detailed plans in terms of Tree Protection plans and Arboricultural Method statement. We are expecting a net gain in overall replacement tree provision. T358 Veteran Oak proposed to be removed is not TPO'd. The fact that it is not TPO'd is not unusual as it is owned by DCiC and deemed to be under good management. We would prefer to see its retention through the detailed planning.
Item 8	b) The approach to biodiversity enhancement and the use of Biodiversity Metric Assessment.	<p>The NPPF requires a net gain in biodiversity and is a strong material consideration in the planning process</p> <p>The OEMP is the place for Biodiversity Metric Assessment and would give comfort going forward.</p> <p>It has been our understanding that biodiversity metrics would be applied to this application in order to fully understand the balance</p>

		<p>between losses and gains and ultimately to ensure that there is no net loss. This is primarily in relation to the habitats that will be impacted by the development rather than species. In this respect paragraph 8.3.24 of Chapter 8 (Biodiversity) within the Environmental Statement states as follows "<i>A NNL (No-net loss) biodiversity assessment (based on suitable metric methodology) has been undertaken and is reported separately to this assessment. Opportunities to achieve NNL (and potentially net gains) in biodiversity within the Scheme boundary based on the Defra metric are being sought to aim to comply with Highways England internal policy guidelines</i>".</p> <p>Highways England Biodiversity Report 2018-19 includes a section (page 15) on measuring biodiversity and it is clear that HE have a commitment to using biodiversity metrics as a tool to help achieve better biodiversity outcomes. Despite the apparent commitment shown in the above statements from HE the application of biodiversity metrics across the development scheme has not to our knowledge been undertaken.</p> <p>Table 8.15 in Chapter 8 (pp 98 – 100) entitled 'Approximate habitat losses and gains associated with the scheme' sets out where HE has identified potential gains and losses. For some habitats such as grassland there is likely to be a net permanent habitat gain, whilst for others e.g. woodland and hedgerows there is likely to be a permanent habitat loss. In the case of both woodland and hedgerows HE argues that the habitats being planted are going to be of higher quality than those being lost. The problem is that without a clear accounting</p>
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		<p>system (which biodiversity metrics would provide) we do not know whether the proposed 6.4 ha of new woodland and the proposed 107m of new hedge are sufficient to achieve no-net loss. How has HE arrived at these precise figures?</p> <p>Our concerns are therefore focussed on the level of mitigation and compensation being proposed for habitat loss within the scheme and the key question is how do we know that no-net loss or indeed any potential net gains have been achieved? How do we separate out those elements of mitigation that comprise actual enhancements once any residual impacts from the scheme have been fully mitigated and compensated for? For example how can we reach agreement that the replacement of 509m of species poor hedgerows with 107m of species rich hedgerow is sufficient to mitigate for the overall loss of hedgerows? Running these figures through a biodiversity metric calculator would give us a figure for how much hedgerow is needed to ensure no-net loss and enable all parties to be comfortable about the mitigation proposed.</p> <p>We have no major concerns regarding the survey methods that have been used to assess individual habitats and we are not questioning the extent or quality of the habitats as presented in the ES.</p> <p>On the associated question of whether the no-net loss approach to biodiversity enhancement is acceptable (rather than aiming for a net gain) it depends on the weight given to the revised NPPF (February 2019). As stated previously DCiC is of the view that greater weight should be placed upon the NPPF policies to enhance the natural</p>
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		<p>environment and provide net gains for biodiversity. We consider that the principles of the NPPF in relation to sustainable development and biodiversity are relevant to a project that clearly has a significant impact on habitats and species. We therefore disagree with Highways England in their determination that limited weight should be afforded to the NPPF in respect of the aspiration for net gain as summarised within para 170d and 175d. In our view Highways England's position is at odds with the current emphasis being placed on avoiding losses of biodiversity and providing net gains.</p> <p>We also note HE have agreed to a net gain in the number of trees to be planted against those being lost and that HE clearly have sought to achieve net gains for some habitats e.g. grasslands. We consider that it is a short step to embrace a net gain approach to enhancements across the scheme as a whole.</p> <p>Ideally it would be advantageous to see the results of a biodiversity metric assessment as soon as possible so that changes to the required mitigation can be included in the scheme at an early stage. However, if undertaking the assessment as part of the detailed design stage still allows for any required changes in the biodiversity enhancements to be made in order to achieve biodiversity gains for the scheme (or at least no-net loss), then this could be a workable way forward.</p>
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Item 10	a) Hydraulic modelling at the Markeaton junction. b) Flood compensation storage at the Little Eaton, Markeaton and Kingsway junctions.	DCiC can confirm acceptance of the Hydraulic modelling at the Markeaton junction DCiC also confirm the flood compensation storage is agreed
	d) Need for further information on discharge rates and volumes.	Detailed design will establish these rates and we would be looking for betterment where possible